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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,358	01/22/2004	Shin Koike	247071USDIV	3263
22850	7590	04/19/2006	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			WEDDINGTON, KEVIN E	
			ART UNIT	PAPER NUMBER

1614

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,358

Applicant(s)

KOIKE ET AL.

Examiner

Kevin E. Weddington

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The allowance of claims 6-13 is vacated, so that new rejections can be made.

Claims 6-13 are presented for examination.

Applicants' amendment filed December 28, 2005 has been received and entered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d.1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-13 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6,852,758 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application teaches a food product comprising an oil composition and food; wherein the oil composition comprises about 0.1 to 59.8% by weight of a triglyceride, about 40 to 99.7% by weight of a diglyceride, about

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0.1 to 10% by weight of a monoglyceride, and at most about 5% by weight of a free fatty acid, wherein a content of ω 3 unsaturated acyl groups having at least 20 carbon atoms and monoenoic acyl groups in acyl groups consisting the diglyceride are about 15 to 89.5% by weight to 84.5% by weight, respectively (A product); and the patented application teaches a method of preparing an oil composition as discussed above supra of the present application therein which makes the method claims of the patented application an obvious variation of the present application. Also note in the patented application in column 4, lines 48-65 states the instant oil composition may be used as a part of food.

Claims 6-13 are not allowed.

Claims 6-13 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13-16 of U.S. Patent No. 7,008,661 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application teaches a food product comprising an oil composition and food; wherein the oil composition comprises about 0.1 to 59.8% by weight of a triglyceride, about 40 to 99.7% by weight of a diglyceride, about 0.1 to 10% by weight of a monoglyceride, and at most about 5% by weight of a free fatty acid, wherein a content of ω 3 unsaturated acyl groups having at least 20 carbon atoms and monoenoic acyl groups in acyl groups consisting the diglyceride are about 15 to 89.5% by weight to 84.5% by weight, respectively; and the patented application teaches a food comprising the oil/fat composition comprises 10.1 to 94.9 wt. % of a triglyceride, 0.1 to 30 wt. % of a monoglyceride, 5 to 59.9 wt.

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% of a diglyceride which has as a fatty acid constituent thereof, 15 to 90 wt. % of an ω 3-unsaturated fatty acid having less than 20 carbon atoms and 10 to 60 wt. % of an C10-24 ω 9-unsaturated fatty acid. The only difference between the present application and the patented application lies in that the patented application, an additional ingredient, is added to the oil composition.

The patented application would anticipate the present application because the present application recites "comprising" and thus open the claims to the inclusion of additional ingredients.

Claims 6-13 are not allowed.


The remaining references listed on the enclosed PTO-892 are cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin E. Weddington whose telephone number is (571)272-0587. The examiner can normally be reached on 11:00 am-7:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (571)272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kevin E. Weddington
Primary Examiner
Art Unit 1614

K. Weddington
April 14, 2006